Supreme Court, U.S.
FILED

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTEMBER TERM, 1997

LEO ROGERS DUGAS - PETITIONER

VS.

CLAMONT ENERGY CORPORATION and
CLARON CORPORATION - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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37 pp

QUESTIONS PRESENTED FOR REVIEW

1. Can a Bankruptcy court and the United States Trustee's Office ignore a confirmed chapter 11 plan, where "substantial consummation" has occurred?

2. When a bankruptcy court presides over two different cases in its district, and these two cases are not consolidated, but are however embroiled in an adversary proceeding. Can this bankruptcy court "without notice" to the creditors of one or both of the debtors, *ex parte or sua sponte*, proceed with this adversary and disregard the protection the automatic stay U.S.C.A. 11 § 362, provides for both, the debtors' and creditor's?

3. Can a bankruptcy court transfer a State-Court "removed" action, to a different Bankruptcy Court in another District for "consolidation" purposes, Fed.R.Civ.P. 42(a)?

4. When does the 30 day time period start, for purposes of an appeal, when Fed.R.Civ.P. 77(d) is invoked?

5. With United States District Courts' having original jurisdiction over cases and proceedings arising in or related to a case under title 11 in its judicial district, U.S.C.A. 28 § 1334, is further jurisdiction needed to review the judgment, order, decree of a bankruptcy judge which is a judicial officer of that court, U.S.C.A. 28 § 151?

6. When a reviewing court (court B) states that its without jurisdiction to hear a matter (from court A), and proceeds anyway with its own interpretation of what that court (court B) believes is the facts, is this action done by that reviewing court (court B) appealable to the next higher appellant court (court C), as if that court (court B) actually had jurisdiction to hear the matter before it?

7. Does the policy that mandates appeals from bankruptcy and district courts to be heard "only" in their respective districts, U.S.C.A. 28 § 158(a), and then on to the court of appeals for that district, the district court is in, violate Constitutional Rights, such as "free choice"? Especially when the appellant(s) knows going in that, that court of appeals is out of step with other court of appeals and in all probability *stare decisis* of that court will alter the result the appellant might get in another court of appeals.

LIST OF PARTIES

Listed below are the other parties to the proceedings in the United States Court of Appeals for the Fifth Circuit:

Mr. Jason Riley Searcy
Chapter 7 Trustee, for debtor Clamont Energy Corp.
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TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	2
JURISDICITION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	7
CONCLUSION	8
APPENDIX TO THE PETITION	9

TABLE OF AUTHORITIES CITED

CASES — Page

United States Supreme Court

Federated Department Stores v. Moite, 452 U.S. 394 ... 2

Kalb v. Feuerstein, 308 U.S. 433 (1940) 7

Stoll v. Gotlieb, 305 U.S. 165 (1938) 2

Stone v. INS 115 S.Ct. 1537 (1995) 8

United States Court of Appeals

Fiore v. Washington County Com. Mental Health Cir.
960 F.2d (1st Cir. 1992) 8

Matter of Manges, 29 F.3d 1034 (5th Cir. 1994) 3

Matter of Wade, 991 F.2d 402 (7th Cir. 1993) 3

Bankruptcy Court

In Re Bankeast Corp.,
142 B.R. 12 (Bkrtcy.D.N.H. 1992) 3

Winom Tool and Die, Inc.,
173 B.R. 613 (Bkrtcy.E.D.Mich. 1994) 3

STATUTES AND RULES

U.S.C.A. title 11:

§ 362 5,7,8
§ 1101(2)(A)(B)(C) 3
§ 1128 2
§ 1129(a) 2
§ 1141(a) 7

title 28:
§ 1254(1) 2

Federal Rules of Civil Procedure:
Rule 52(b) 6
Rule 60(b) 6
Rule 77(d) 6

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

PETITION FOR WRIT OF CERTORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment(s) below.

_____

Leo Rogers Dugas,
pro se, petitioner

OPINIONS BELOW

None of the courts below have published any ruling(s).

JURISDICTION

The date on which the United States Court of Appeals decided my case was October 28, 1997. There is no post-decision motion before the United States Court of Appeals. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOKED

The Fourteenth Amendment to the Federal Constitution (due process).

STATEMENT OF THE CASE

On September 9, 1989 an order for relief by debtor Clamont Energy Corporation (Clamont) in a chapter 11 case no. 89-11943, in the Bankruptcy Court for the Eastern District of Texas, Beaumont Division. Shortly thereafter a trustee was appointed and this trustee proposed a Plan of Reorganization to the creditors and was approved by virtually all the creditors, see *Stoll v. Gotlieb* 305 U.S. 165,172, 175 (1938). This Plan was to liquidate the chapter 11 estate in chapter 11 instead of a straight chapter 7 and this issue was discussed at the confirmation hearing, see *Federated Department Stores, Inc. v. Moite* 452 U.S. 394, 398.

On May 29, 1991 after a confirmation hearing, U.S.C.A. 11 § 1128, an order confirming Clamonts' chapter 11 plan (to liquidate) was signed, U.S.C.A. 11 § 1129(a) and the chapter 11 trustee was discharged and made fiscal agent over the Plan to liquidate the chapter 11 estate property. The parties that disagreed with this Plan (one being the president of the debtor corporation) eventually were persuaded to go alone with this Plan or the "cram down" provision was used. This Plan was never stayed, appealed nor revoked, see

Matter of Manges 29 F.3d 1034, 1039 (5th Cir. 1994) and the liquidating agent within three weeks of the docketing of the Plan in the bankruptcy court had already started selling Plan property and had taken over the running of the debtors business, U.S.C.A. 11 § 1141 §§ 1101(2)(A)(B)(C), closing the case as the chapter 11 estates property left the estate, see *Winom tool and Die, Inc.* 173 B.R. 613 (Bkrtcy.E.D.Mich. 1994).

The attorney firm for the chapter 11 trustee moved the bankruptcy court in the Eastern District of Texas, to convert the chapter 11 case to one under chapter 7. The attorney firm's reason was it had not received its attorney fees, see **Appendix "A"**. Another creditor being an attorney himself, represented another creditor who moved the bankruptcy court to convert to a chapter 7 case, although all creditors were bound by the Plan, U.S.C.A. 11 § 1141(a), the case was converted on June 19, 1992 and a chapter 7 trustee was appointed a Mr. Jason Riley Searcy (Searcy). Absent a provision in the Plan for conversion to a chapter 7 case, it would seem that did not stop the creditors from using a provision for the bankruptcy court to retain jurisdiction.

> "Congress did not intend that the Bankruptcy Court should, after an approval of a plan ... have power to remain a wet-nurse to the reorganized company. A bankruptcy court cannot obtain that power merely by inserting a provision reserving jurisdiction.", quoting *In Re Bankeast Corp.* see 142 B.R. 12 (Bkrtcy.D.N.H. 1992). It would seem that the United States Trustee missed his opportunity to step in by allowing this action to be converted and stay in chapter 7 for nearly 6 years, when Plan was approved on May 29, 1991, see *Matter of Wade,* 991 F.2d 402, 406 (7th Cir. 1993).

Clamont's presidents' (Mr. Lance Dreyer), mother, Ms. Peggy Dreyer, started up a company called Claron Corporation (Claron) and Mr. Lance Dreyer became one of its agent(s). Claron obtained a judgment against an ex-employee of Clamont, Mr. Buescher, who had helped liquidate some of the Plan property. Claron (erroneously believed Mr. Buescher was d/b/a J.S.B. Petroleum Inc.) notified the oil gather who was gathering oil from a oil lease that at one time was property of the chapter 11 estate. Claron notified this oil gather, Howell Crude, of the judgment Claron had and that to

pay any money to anyone other than Claron would be wrong. Mr. Buescher on November 30, 1992 filed for relief under chapter 7 in the Southern District of Texas, Houston Division case no. 92-50141. Four (4) days after Mr. Buescher filed for bankruptcy, Howell Crude filed an action in Harris County Court (Texas) case no. 611,156, because of Claron's judgment against Mr. Buescher.

On April 19, 1993 this state-court case was "removed" to the federal bankruptcy court in the Southern District of Texas, Houston Division under adversary no. 93-4250 and Mr. Bueschers' chapter 7 trustee, Ms. Johnson intervened.

On January 28, 1993 Searcy the 7 trustee filed an adversary proceeding no. 93-4054 against the former chapter 11 trustee in his personal bankruptcy case no. 92- 47994-H4-7 and his bonding company was brought in later. This adversary proceeding was dismissed "with prejudice" with all parties to bear its on cost, this action taken in the Southern District Bankruptcy Court of Texas. However, in the Eastern District of Texas where Searcy's chapter 7 case is, (and where there was no pending action against the chapter 11 trustee or his bonding company) the bonding company with court approval, see **Appendix "B"**, gave over to Searcy $45,000.00 (Forty-Five Thousand Dollars) ?

On May 10, 1993, Searcy moved against petitioner and all the corporation's I and my wife were in, and several other parties who by now have been dismissed in this adversary no. 93-1031, including Claron. In August of 1993, Searcy moved the Eastern District bankruptcy court to allow him to appoint an operator to operate the oil and gas properties (Plan property) in dispute until Searcy's adversary ended. Because all the funds were ordered into a Registry of the Court, both in the county court and the bankruptcy court, all expenses were being paid by the defendant's personally and this way money generated by these properties could be released to keep these leases alive using Searcy's operator. With this in mind petitioner did not object to Searcy's action to appoint an operator. However, to date Searcy claims he did not appoint a operator, that he had court approval to do and he does not have any money generated by the defendant's property while awaiting an outcome of Searcy's adversary no. 93-1031.

On January 10, 1994 petitioner filed for relief in the Eastern District in a chapter 13 case no. 94-10027. Shortly thereafter Searcy with court approval compromised and settled with Claron only and sold to Claron whatever right the debtor Clamont had in Searcy's adversary. Searcy's order presented to that court included the removed state-court action (no. 93-4250), still in the Southern District of Texas and an action Searcy had not intervened in nor did Searcy consolidate with his adversary no. 93-4054 he had pending against the chapter 11 trustee, which seems to be a "waiver" to make any claim to adversary no. 93-4250.

On February 23, 1994, the Southern District bankruptcy court transfered its adversary no. 93-4250 to the Eastern District, to be docketed with adversary no. 93-1031 which Claron believed they now had control of and had asked for its transfer, see **Appendix "C"**. This was done without petitioner's knowledge and without Claron (a creditor in my bankruptcy case) being granted a motion to lift the automatic stay U.S.C.A. 11 § 362. Further, the bankruptcy code would never allow an "insider" in Searcy's chapter 7 case to use the avoidance powers. Claron was sold property that Searcy never avoided, (to recover the title to Plan property sold by the liquidating agent, if he indeed could attack Plan property) and therefore leaving Claron without title to the property in dispute.

Listed in petitioners' bankruptcy chapter 13 case were the corporations and accounts receivable (being the money generated by the properties owned by these corporations). Claron had moved the county court to release the money held in the registry of that court under the pretense that adversary no. 93-4250 was closed, see **Appendix "D"**. Petitioner moved the bankruptcy court (Eastern District) to have that money disgorged and showed that court the action taken in violation of U.S.C. 11 § 362. This motion to disgorge was heard and denied and was appealed to the United States District Court in case no. 1:95-cv-01132. Both courts did not accept the State of Texas' government document signed by the County Clerk that showed that funds were released to Claron and petitioner has recently appealed to the Fifth Circuit court of appeals.

After a hearing on a Show Cause Order generated by the bankruptcy court (Eastern District) *sua sponte* an Order of Remand issued, see **Appendix "E"**. Petitioner had filed a motion for Reconsideration and Recusal, this motion was before the bankruptcy court when the Order of Remand was docketed on May 14, 1996. Petitioner after learning his Motion for Reconsideration and Recusal was denied and docketed on June 11, 1996, see **Appendix "F"**, that action in the county court on the Remand had already concluded on June 4, 1996, see **Appendix "G"**.

Because "no notice" had been sent to petitioner that the Order of Remand had issued, petitioner relying on Federal Rules of Civil Procedure Rule 77(d) filed an appeal to the United States District Court in case no. 1:96-cv-00478.

The district court denied petitioners' appeal as out of time and thus having no jurisdiction, yet that court chose to embellish on the matters not before it, see **Appendix "H"**. Because of constitutional beliefs of "due process" petitioner appealed case no. 1:96-cv-00478 to the Fifth Circuit under case no. 96-41030, styled *In the Matter of CLAMONT ENERGY CORPORATION INC.* and on January 27, 1997 petitioner's chapter 13 Order of Discharge was filed of record.

After appealing the districts courts' decision to deny the appeal before it, petitioner invoked Fed.R.Civ.P. Rule 60(b), (because of the mistakes the district court made in its reading of the record before it). The district court's response to this motion filed on December 20, 1996 was to deny it on February 26, 1997, see **Appendix "I"**. Seven days later on March 5, 1997 petitioner invoked Fed.R.Civ.P. Rule 52(b) for findings of fact and conclusion of law and this motion was also denied, see **Appendix "J"**. Because the Rule 60(b) and Rule 52(b) denials were issued under the separate document Rule 58, both denials were appealed to the Fifth Circuit court of appeals case no. 97-40484 and case no. 97-40485.

On October 28, 1997 the court of appeals for the Fifth Circuit denied both case no. 97-40484, see **Appendix "K"**, and case no. 97-40485, see **Appendix no. 12**, and were filed of record. Whereby petitioner now respectfully presents this *Petition for Writ of Certiorari* now before this Court.

REASON FOR GRANTING THE PETITION

At issue here is, the public cannot rely on a Confirmed Plan and believe that the United States Trustee, (the watch dog of bankruptcy cases) will perform their duties. Should not the United States Trustee also review the actions of the bankruptcy clerk. It would seem that if a bankruptcy court is constantly issuing orders and opinions that are appealed, that it just might be the law clerk that is the problem and not the court itself.

Absent a strong safeguard of the automatic stay U.S.C.A. 11 § 362 (even from the courts themselves), can the public rely on this Stay. Will a debtor and creditor alike, relax after a petition for relief is filed. Or will this Court allow the parties that ignore the Stay simply shrug their shoulders and say "I didn't know there was a bankruptcy case and I believe my action against the debtor should stand anyway". This is however the results the petitioner has endured. Even the bankruptcy court(s) seems oblivious to the Stay, without ever notifying the creditors of the debtor, they issue orders that effect the property of the estate, without regards for the creditors constitutional rights of "due process". Should not all parties to a bankruptcy case rely on a fair case, that does not cost so much to all concern. This Court can stop this trend of degradation of the Stay, that has made filing for protection under chapter 13 a costly affair. Had not the petitioner started to take matters in his own hands, the petitioner would of had to convert to a case under chapter 7. Not because petitioner should of filed under chapter 7 first, but because of all the legal maneuvers the creditors and others can do when the Stay is not adhered to. If however the Stay as adopted by Congress was upheld and that "all" meant "all" in § 362(a) then § 362(c) would protect "all" concerned from any court that did not have an order issued pursuant to § 362(d). This would make "all" respect a bankruptcy case and upon finding such a violation of the Stay simply render that act as VOID, see *Kalb v. Feuerstein*, 308 U.S. 433, 438 (1940), except however for § 362(b). If petitioner could have had the protection of the Stay then these past years tied up in one court or another and tying up the courts, because someone "could" move against a debtors' estate. These actions

violating the Stay would disappeared, as other action(s) in many courts would also cease, given the teeth § 362(h). However petitioner may portray the results of the violation of the Stay, any opposing party that wishes to take a chance that their action will not be discovered or that the debtor will not have the wherewithal to hire an attorney, then the debtor simply loses.

The Court of Appeals for the Fifth Circuit, has by not ruling, ruled, in favor for themselves. Because not to have ruled as did other Circuits on a Rule 58 document, the Fifth Circuit is at odds now with this other Circuit, see *Fiore v. Washington County Com. Mental Health Ctr.* 960 F.2d 229 (1st Cir. 1992) and this own Court's ruling in *Stone v. INS* 115 S,Ct. 1537, 1548 (1995), as petitioner proffered before both the district court and the Fifth Circuit with this Court's ruling in, *Stone, supra.*

CONCLUSION

It has been shown to this Court how awful the system has become for someone to have to come this far with an action "just" to protect their property from parties hell bent on taking it. Nothing in petitioners adult life could have made me believe all what has happened and still happening was possible in these United States. This Court nor petitioner can began to guess how many fellow citizens have and will go thru this same scenario, except many will fall by the wayside because they cannot afford a lawyer. This Court can today at least help by putting more teeth into U.S.C. 11 § 362, and relieve many parties of soaring cost just to put their lives back together under the Bankruptcy Code. This one act of this Court (§ 362) will reduce the case load on many courts, if this Court does not believe so, just look what happen to the petitioner.

This is why I, Leo Rogers Dugas, pro se petitioner have this 25th day of January, 1998 submitted my *Petition for a Writ of Certiorari,* to this Supreme Court of the United States.

Respectfull submitted,

_____

Leo Rogers Dugas, pro se